

Daniel T. Shvodian, Bar No. 184576  
DShvodian@perkinscoie.com  
PERKINS COIE LLP  
3150 Porter Drive  
Palo Alto, California 94304-1212  
Telephone: 650.838.4300  
Facsimile: 650.838.4350

Christina J. McCullough, Bar No. 245944  
CMcCullough@perkinscoie.com  
PERKINS COIE LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101-3099  
Telephone: 206.359.8000  
Facsimile: 206.359.9000

*Attorneys for Defendant  
Amazon.com, Inc.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

POP TOP CORP.,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

Case No. 5:22-cv-00112-PCP

**AMAZON'S MOTION TO DISMISS CASE  
DUE TO POP TOP'S FAILURE TO  
RETAIN COUNSEL**

**Date:** February 15, 2024

**Time:** 10:00 am

**Place:** San Jose Courthouse  
Courtroom 8, 4th Floor  
280 South First Street  
San Jose, California 95113

**Judge:** Honorable P. Casey Pitts

**I. NOTICE OF MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Court's Order Conditionally Granting Mr. Matthew Wawrzyn's Motion to Withdraw (ECF No. 66) and Fed. R. Civ. Proc. 41(b), Amazon respectfully moves this Court to dismiss this case with prejudice for Pop Top's failure to prosecute or comply with a Court Order. Amazon has noticed this Motion for hearing before the Honorable Judge P. Casey Pitts on February 15, 2024, at 10:00 am, San Jose Courthouse, Courtroom 8, 4<sup>th</sup> Floor, 280 South First Street, San Jose, California 95113.

As discussed in the following Memorandum of Points and Authorities, Amazon seeks dismissal of this case with prejudice because the Court ordered Pop Top to obtain new counsel within thirty days of the Order Conditionally Granting Mr. Wawrzyn's Motion to Withdraw (ECF No. 66), "in the absence of which the case will be dismissed for failure to prosecute." Pop Top failed to obtain new counsel—or take any action with respect to this case, such as responding to correspondence from Amazon—during that period. Dismissal is thus warranted.

This Motion is based on the Notice of Motion, the following memorandum of points and authorities, the pleadings, papers, and the entire record herein, oral argument on this Motion (if any), and on such other matters as may be presented to the Court at or before the hearing on this Motion, and all matters for which the Court may take judicial notice.

**II. STATEMENT OF THE ISSUE TO BE DECIDED**

Whether dismissal of this case with prejudice for failure to prosecute is warranted.

**III. MEMORANDUM OF POINTS AND AUTHORITIES**

Amazon respectfully requests that the Court dismiss this case with prejudice. The Court's Order Conditionally Granting Mr. Wawrzyn's Motion to Withdraw provided that "POP TOP CORP be given thirty days to obtain new counsel from the date of this Order [Nov. 20, 2023]" and that "in the absence of which the case *will be dismissed for failure to prosecute.*" (ECF No. 66 (emphasis added).) The following day, Amazon wrote Mr. Wawrzyn and Pop Top's sole principal, Mr. Rohit Chandra, and requested dismissal of the litigation. (Ex. A.)<sup>1</sup> Neither responded during

<sup>1</sup> The Exhibits referenced herein are exhibits to the Declaration of Daniel T. Shvodian in

1 the 30-day period set by the Court for Pop Top to retain new counsel. That 30-day deadline passed  
 2 on December 20, and Pop Top failed to retain new counsel. To avoid further time and expense,  
 3 Amazon again contacted Mr. Wawrzyn and Mr. Chandra on December 26 to ask that Pop Top agree  
 4 to dismiss the case. (Ex. B.) Mr. Chandra responded on December 27, claimed that he was unaware  
 5 of Mr. Wawrzyn's motion to withdraw, and requested an additional 30 days for Pop Top to retain  
 6 counsel. (Ex. C.) Amazon declined that request because: (1) Mr. Wawrzyn's motion to withdraw  
 7 had been served on Pop Top on August 14, 2023 (*see* ECF No. 55 at Certificate of Service ("Further, I declare under penalty of perjury that a copy was emailed to Pop Top. 8-14-2023.")); (2)  
 8 Amazon had notified Mr. Chandra of the motion to withdraw in its November 21 email (Ex. A);  
 9 and (3) Pop Top has been unable to retain new counsel in the *Rakuten Kobo* litigation in which Pop  
 10 Top claims to be unable to pay any of the fees awarded against for filing a frivolous lawsuit. (Ex.  
 11 D.)

12  
 13 Because Pop Top failed to retain counsel within the 30-day period established by the Court  
 14 the case should be dismissed. And the dismissal should be with prejudice due to Pop Top's failure  
 15 to prosecute or comply with a Court order. *See* Fed. R. Civ. Proc. 41(b) (stating that the dismissal  
 16 shall operate "as an adjudication on the merits" unless the court orders otherwise or the decision  
 17 was due to lack of jurisdiction, improper venue, or failure to join a party); *Pagtalunan v. Galaza*,  
 18 291 F.3d 639, 642 (9th Cir. 2002) (dismissing case with prejudice for failure to prosecute).

19 Accordingly, Amazon respectfully requests that the Court dismiss this suit with prejudice.  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27

28 Support of Amazon's Motion to Dismiss Case Due to Pop Top's Failure to Retain Counsel, filed  
 concurrently herewith.

1 Dated: December 28, 2023

By: /s/ Daniel T. Shvodian  
Daniel T Shvodian  
DShvodian@perkinscoie.com  
PERKINS COIE LLP  
3150 Porter Drive  
Palo Alto, CA 94304  
Telephone: 650.838.4300  
Facsimile: 650.838.4350

Christina McCullough  
CMcCullough@perkinscoie.com  
PERKINS COIE LLP  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Telephone: 206.359.8000  
Facsimile: 206.359.9000

*Attorneys for Defendant  
Amazon.com, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on December 28, 2023, a true and correct copy of the foregoing motion and supporting documents were served on all interested Parties via the Court's ECF system, and a copy was also sent via email to Rohit Chandra at rchandra@hotmail.com.

/s/ Daniel T. Shvodian

Daniel T. Shvodian